

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

Richland/Wilkin Joint Powers Authority, a
Minnesota-North Dakota Joint Powers
Authority,

Civil File No. 0:13-cv-02262-JRT-
LIB

Plaintiff,

and

Minnesota Department of Natural Resources,

Plaintiff-Intervenor

vs.

United States Army Corps of Engineers; John E. Whitley, Acting Secretary of the Army (in his official capacity); Taylor N. Ferrell, Acting Assistant Secretary of the Army for Civil Works (in his official capacity); and Col. Karl Jansen, District Commander, St. Paul District, US Army Corps of Engineers (in his official capacity)¹,

Defendants,

Fargo-Moorhead Flood Diversion Board of Authority,

Defendant and Defendant-Intervenor,

and

City of Oxbow,

Defendant-Intervenor

¹ Pursuant to Fed. R. Civ. P. 25(d), Acting Secretary of the Army John E. Whitley is automatically substituted in place of former Secretary of the Army Mark Esper; Taylor N. Ferrell, Acting Assistant Secretary of the Army for Civil Works, is automatically substituted in place of former Assistant Secretary of the Army for Civil Works R.D. James; and Col. Karl Jansen, District Commander, St. Paul District, U.S. Army Corps of Engineers, is automatically substituted in place of former St. Paul District Commander Col. Samuel Calkins.

The above-named parties hereby submit this Joint Stipulation for Dismissal pursuant to Fed. R. Civ. P. 41(a)(2) by and through their undersigned attorneys.

RECITALS

WHEREAS, this Joint Stipulation for Dismissal is entered into between the Plaintiff Richland-Wilkin Joint Powers Authority (“R/W JPA”), Plaintiff and Plaintiff-Intervenor Minnesota Department of Natural Resources (“DNR”); Defendants United States Army Corps of Engineers (“USACE”), including the above-named federal officials acting in their official capacities (collectively “Federal Defendants”); Defendant and Defendant-Intervenor Fargo-Moorhead Flood Diversion Board of Authority (“Diversion Authority”), and Intervenor the City of Oxbow (“Oxbow”) (collectively, the “Parties”).

WHEREAS, USACE, the Cities of Fargo, North Dakota, Moorhead, Minnesota, and the Diversion Authority have been seeking to construct and operate a permanent flood risk management project known as the Fargo-Moorhead Metropolitan Area Flood Risk Management Project (the “Project”), an alignment of which colloquially known as “Plan A” was studied by the USACE in a 2011 Final Feasibility Report and Environmental Impact Statement and 2013 Supplemental Environmental Assessment; and

WHEREAS, on August 9, 2013, the R/W JPA commenced this action challenging Plan A; and

WHEREAS, Congress authorized the Project in the Water Resources Reform and Development Act of 2014 (“WRRDA 2014”); and

WHEREAS, the R/W JPA's currently operative Complaint is the Fourth Amended Complaint [ECF #410], alleging claims under the National Environmental Policy Act (dismissed in ECF #530), the Minnesota Environmental Rights Act ("MERA"), state permitting requirements, and WRRDA 2014; and

WHEREAS, the DNR intervened and filed its own Complaint on March 24, 2017 [ECF #411], alleging claims under the federal Administrative Procedure Act for alleged violations of WRRDA 2014 Sections 2232(d)(4) and 7002, MERA, and Minnesota Statutes Section 103G.135; and

WHEREAS, the R/W JPA and DNR each also sought preliminary injunctive relief, which was granted in part [ECF #530]; and

WHEREAS, the respective Governors of the States of Minnesota and North Dakota convened a "Governors' Task Force" to develop design principles and concept level engineering solutions to achieve balanced flood risk management for the Fargo-Moorhead region including upstream and downstream communities and properties; and

WHEREAS, the Diversion Authority proposed an alternative that was an outgrowth of the Governor's Task Force known as "Plan B"; and

WHEREAS, the DNR issued a permit for Plan B which was subsequently challenged by the R/W JPA and subjected to a state contested case hearing; and

WHEREAS, on October 26, 2020, the Diversion Authority, R/W JPA, and other entities not party to this proceeding entered into a Binding Term Sheet for resolution of their disputes regarding Plan B which in part called for the withdrawal of objections to the issuance of DNR permits for Plan B and dismissal of this action; and

WHEREAS, the DNR was not party to said term sheet but agreed to a stipulated resolution of the contested case hearing challenging the DNR's Plan B Permit decision; and

WHEREAS, the administrative proceeding was fully resolved on February 9, 2021, and the DNR's Permit No. 2018-0189 ("Plan B Permit"), authorizing Plan B with conditions, was amended and re-issued on March 19, 2021; and

WHEREAS, following issuance of the Permit, the Parties jointly agree that this action can and should be dismissed.

NOW THEREFORE, the Parties jointly stipulate and agree as follows:

1. The Parties jointly request that the Court dismiss the R/W JPA's Fourth Amended Complaint [ECF #410] WITH PREJUDICE and without costs or attorney's fees to any Party;

2. The Parties jointly request that the Court dismiss the DNR's Complaint [ECF #411] WITHOUT PREJUDICE and without costs or attorney's fees to any Party; and

3. Because the DNR has issued a permit for the Plan B Project, the Parties jointly request that the Court DISSOLVE the preliminary injunction granted by the court on September 7, 2017, without costs or attorney's fees to any Party.

Dated: March 25, 2021

RINKE NOONAN

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